

SERVICE DATE – JUNE 2, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 237X)

UNION PACIFIC RAILROAD COMPANY AND SALT LAKE CITY CORPORATION–
ABANDONMENT EXEMPTION–
IN SALT LAKE CITY, UT

Decided: May 24, 2006

By joint petition filed on February 13, 2006, Union Pacific Railroad Company (UP) and Salt Lake City Corporation (City) seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for UP to abandon, subject to a voluntary condition, a 2.2-mile line of railroad, extending from milepost 780.1 west of Redwood Road to milepost 782.32 near 4th West Street, in Salt Lake City, UT (the Line). Notice of the filing was served and published in the Federal Register on March 3, 2006 (71 FR 11017). We will grant the exemption, subject to environmental conditions, standard employee protective conditions, and a voluntary condition requiring the substantial completion of alternative routes, as discussed below.

BACKGROUND

The Line was constructed in 1905-1906 as part of a main line between Salt Lake City and the western United States. Use of the line diminished over time, and, in 1999, UP suspended service over the portion of the Line east of Redwood Road (milepost 780.79) to facilitate the Salt Lake City Gateway Area Redevelopment Project and related highway improvements. In 2001, UP reactivated the Line as a freight bypass for through traffic to relieve pressure on its existing routings via Grant Tower, which is a short distance to the north of the Line.¹

The City opposed the reactivation because the Line is located in a residential area. There are no shippers on the Line and all of the traffic is overhead, consisting of 10-12 trains per day. To address the impact of the reopened line on the community through which it operates, the

¹ The Line has been the subject of two prior Board decisions in Union Pacific Railroad Company – Petition for Declaratory Order, STB Finance Docket No. 34090 (STB served Nov. 9, 2001) and Salt Lake City Corporation – Adverse Abandonment, STB Docket No. AB-33 (Sub-No. 183) (STB served Mar. 8, 2002) (2002 Decision). A petition for review of the 2002 Decision and a related district court decision, in Salt Lake City Corporation v. Union Pacific Railroad Company, Case No. 2:01-CV-655ST (filed April 11, 2002), are presently pending before the U.S. Court of Appeals for the 10th Circuit. Both cases have been held in abeyance pending settlement negotiations between UP and the City.

parties negotiated an agreement, signed on April 7, 2004 (2004 Agreement), providing for the reconfiguration of UP's main line tracks at Grant Tower (Grant Tower Project), including related track and signal changes at other nearby locations. The Grant Tower Project would increase the capacity of UP lines through Grant Tower, allowing UP to reroute the current traffic over the Line through Grant Tower and, thereby, alleviate its need for the Line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by allowing UP to avoid the cost of owning and maintaining a line that is not being used [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because there are no shippers on the line. The Line carries only overhead traffic, which can be rerouted. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting the exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

UP has submitted environmental and historic reports with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on April 14, 2006, and requested comments by May 15, 2006.

In the EA, SEA sets forth environmental concerns and recommendations for conditions to be imposed on any decision granting abandonment authority. In the EA, SEA notes that the U.S. Environmental Protection Agency (USEPA) and the Utah Department of Environmental Quality (UDEQ) have not filed comments with the Board on whether salvage activities from the proposed abandonment will trigger the permit requirements of section 402, National Pollutant

Discharge Elimination System (NPDES) of the Clean Water Act (CWA) for stormwater discharges. However, one portion of the Line crosses a major tributary of the Jordan River, which might be impacted during salvage activities. Therefore, to ensure appropriate consideration of NPDES requirements, SEA recommends that UP be required to consult with USEPA and UDEQ prior to commencement of any salvage activities, and comply with the NPDES requirements.

Also, SEA states in the EA that the U.S. Army Corps of Engineers (Corps) has not filed comments on whether the proposed abandonment will require a permit under section 404 of the CWA. Because the Line crosses a tributary of the Jordan River, prior to commencement of any salvage activities, SEA recommends that UP be required to consult with the Corps regarding its requirements for salvage activities in and around major bodies of water and, if applicable, comply with the requirements of the Corps.

In the EA, SEA states that the Utah Department of Community and Culture (SHPO), identified two bridges (constructed in 1928 and 1931) located along the Line that are eligible for inclusion in the National Register of Historic Places (National Register). Therefore, SEA recommends that UP be required to retain its interest in, and that UP and the City be prohibited from altering, all sites, buildings, and structures within the right-of-way that are eligible for listing or are listed in the National Register until the section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), has been completed. SEA also recommends that the parties be required to report back to SEA regarding any consultations with the SHPO and any other party consulted in the section 106 process.

UP and the City seek imposition of an additional condition. They request that the Board issue this abandonment exemption conditioned upon the substantial completion of the Grant Tower Project. The City is concerned that, unless abandonment authority is obtained from the Board, the terms of the 2004 Agreement obligating UP to reroute traffic from the Line and abandon the portion of the Line east of Redwood Road upon substantial completion of the Grant Tower Project may not be enforceable. UP was unwilling to seek abandonment authority until the Grant Tower Project was substantially completed. The requested condition is a creative settlement of the conflict between UP and the City that allows both parties to benefit. Thus, the requested condition will be imposed in this decision.

No comments to the EA were filed by the due date. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not

significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be appropriate for other public use. Public use requests were due no later than 20 days after the publication of the notice of the petition in the Federal Register, or March 23, 2006. However, no public use condition has been requested, and, therefore, none will be imposed in this decision.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903, the abandonment by UP of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that: (1) UP consult with USEPA and UDEQ, prior to commencement of any salvage activities, and comply with the NPDES requirements; (2) UP consult with the Corps, prior to commencement of any salvage activities, regarding its requirements for salvage activities in and around major bodies of water and, if applicable, shall comply with the requirements of the Corps; (3) UP and the City retain their interest in, and take no steps to alter, the historic integrity of all sites, buildings, and structures within the right-of-way that are eligible for listing or are listed in the National Register until the section 106 process of the NHPA has been completed; and (4) UP and the City report to SEA any consultations with the SHPO and any other party consulted in the section 106 process. Additionally, the proposed abandonment is conditioned upon the substantial completion of the Grant Tower Project, as agreed to by UP and the City in the 2004 Agreement.

2. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by June 12, 2006, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

4. Provided no OFA has been received, this exemption will be effective on July 2, 2006. Petitions to stay must be filed by June 19, 2006, and petitions to reopen must be filed by June 27, 2006.

5. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by June 2, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary